

PUBLIC VERSION

December 5, 2001

Gloria Blue Executive Secretary Trade Policy Staff Committee Office of the U.S. Trade Representative 600 17th Street, NW Washington, DC 20508

THIS DOCUMENT CONTAINS NO BUSINESS CONFIDENTIAL INFORMATION

Attention: Mr. Andrew Stephens

Mr. Willlis Martyn

Ms. Carmen Suro-Bredie

Re: Response to Exclusion Requests

Dear Ms. Blue:

Caterpillar Inc. ("Caterpillar") herewith submits its response to various exclusion requests submitted to the Trade Policy Staff Committee on November 13, 2001. Caterpillar hereby submits one copy of this business confidential submission and one copy of a public version that does not contain any business confidential information.

We request business confidential treatment for the information designated as such in this submission, pursuant to 15 C.F.R. § 2003.6. Confidential treatment is required for the information so designated, for the reasons described below. In each instance, the data for which confidential treatment is requested are not otherwise available from public sources, and disclosure of this information to the public would harm Caterpillar's competitive position in the marketplace:

POWELL GOLDSTEIN FRAZER & MURPHY LLP Ms. Gloria Blue December 5, 2001 Page 2

<u>Page 3</u>: This page contains sensitive information regarding the details of Caterpillar's production process and merchandise produced. This information is highly proprietary, the public disclosure of which would cause serious harm to its position in the marketplace.

<u>Pages 4 and 6-7</u>: These pages contain sensitive information regarding the details of Caterpillar's suppliers, its production processes and merchandise produced, as well as its internal business decisions for the various categories of products it manufactures. This information is highly proprietary, the public disclosure of which would cause serious harm to its competitive position in the marketplace.

<u>Page 10</u>: This page contains sensitive information regarding the details of Caterpillar's suppliers, its production process and merchandise produced, as well as its internal business decisions for the various categories of products it manufactures. This information is highly proprietary, the public disclosure of which would cause serious harm to its position in the marketplace.

<u>Exhibit 1</u>: This exhibit contains sensitive information regarding the identity of certain parties providing support for Caterpillar's exclusion request. This information is highly proprietary, the public disclosure of which would cause serious harm to its position in the marketplace.

Exhibit 4 This exhibit contains sensitive information regarding the details of Caterpillar's suppliers, its production process and merchandise produced, as well as its internal business decisions for the various categories of products it manufactures. This information is highly proprietary, the public disclosure of which would cause serious harm to its position in the marketplace.

If you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

Richard M. Belahger Elizabeth C. Hafner Camelia C. Mazard

Counsel to Caterpillar Inc.

Enclosures

BEFORE THE TRADE POLICY STAFF COMMITTEE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

RESPONSE TO REQUESTS FOR THE	
EXCLUSION OF SPECIFIC PRODUCTS	
UNDER SECTION 203 OF THE TRADE	
ACT OF 1974 WITH REGARD	
TO IMPORTS OF CERTAIN STEEL	Š
	;

RESPONSE TO EXCLUSION REQUESTS

On Behalf of

CATERPILLAR INC.

POWELL, GOLDSTEIN, FRAZER & MURPHY LLP 1001 Pennsylvania Avenue, NW Suite 600 Washington, DC 20004 (202) 347-0066

Counsel:

Richard M. Belanger Elizabeth C. Hafner Camelia C. Mazard

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On November 13, 2001, Caterpillar Inc. ("Caterpillar") filed an exclusion request with the Trade Policy Staff Committee (the "Committee"), requesting that the President exclude alloy track bar, carbon track bar and alloy ripper shank steel from any restrictive trade measures taken under section 203(a) of the Trade Act of 1974 (the "Act"). On that same day, Corus Group plc ("Corus") also filed an exclusion request with the Committee on special profiles. Caterpillar hereby submits the following comments and clarifications to Corus' exclusion request. Most importantly, Caterpillar must emphasize that there is no U.S. production of track bar or alloy ripper shank steel.

I. No One in the United States Manufactures the Products for Which Caterpillar has Requested an Exclusion

Caterpillar has requested an exclusion for three products not produced in the United States: alloy track bar (also known as boron alloy track bar), carbon track bar, and alloy ripper shank steel. Corus, in turn, included track bar and alloy ripper shank steel among the special profiles for which it requested an exclusion.³ In the public version of its exclusion request, although Corus stated that no one in the United States produces either of these products, it

Exclusion Request on Behalf of Caterpillar Inc., filed November 13, 2001 (X-115-Caterpillar) ("Caterpillar's Exclusion Request").

See Corus' Steel: Exclusion Request for Special Profiles, filed November 13, 2001 (X-148-Corus) ("Corus' Exclusion Request"). Also on November 13, 2001, Corus filed a request to reclassify a semi-finished steel product as a billet rather than a slab. Steel 201, Request to Reclassify a Product for Section 203 Import Relief - Forging Quality Round Cornered Square Carbon Billets, filed November 13, 2001 (X-040-Corus_Group). Caterpillar agrees that the physical shape of this product reveals that it should be classified as a billet not a slab. Additionally, ISTIL (Ukraine) Ltd. filed an exclusion request for large SBQ Bar, arguing that failure to exclude this product would result in a single domestic producer with monopoly power. Public comments on behalf of ISTIL (Ukraine) Ltd., filed November 13, 2001 (X-026-ISTIL Ukraine_Ltd.). Caterpillar opposes any remedy that would result in tariffs or quotas on large SBQ Bar that would give a U.S. mill monopoly type power.

As discussed below and as clarified in Corus' new submission, the term "grouser bar" used by Corus in its original submission was intended to mean the same thing as "track bar" as defined by Caterpillar, and includes both alloy and carbon track bar.

appears to have provided estimated volumes of U.S. production.⁴ As described below in Section II.C, there is presently no production of either track bar or alloy ripper shank steel in the United States, nor any reasonable likelihood of such production in the near future. Nothing in the record before either this Committee or the U.S. International Trade Commission (the "Commission") demonstrates otherwise.

A. Caterpillar Has Demonstrated That It is Unable to Buy Track Bar or Alloy Ripper Shank Steel from Mills in the United States

As Caterpillar described in detail in its exclusion request, and in its briefs to the Commission, there is no production of either track bar or alloy ripper shank steel in the United States. All of Caterpillar's efforts to source its track bar and alloy ripper shank steel from U.S. mills have failed. Caterpillar has strict physical, technical, mechanical, and quality specifications that must be met by all steel used in its earth moving machinery. For track bar, no U.S. mill has the steel-making capability and the rolling equipment capable of meeting Caterpillar's size and quality requirements. For alloy ripper shank steel, no U.S. mill has the casting equipment capable of meeting Caterpillar's size and quality requirements.

1. Track Bar

Caterpillar requires track bar in three configurations: large boron alloy track bar, small boron alloy track bar and small carbon track bar. As described in Caterpillar's exclusion request, Caterpillar has gone to great lengths to purchase track bar domestically. ⁵ Caterpillar, however has been unable to source these products domestically.

Caterpillar has been unable to source large alloy track bar from a U.S. mill since the 1980's, when the three domestic mills making track bar for Caterpillar chose to exit this

See Corus' Exclusion Request at 2, 3 and 9.

Caterpillar's Exclusion Request at 6-10.

business. No mill in the United States has the combination of bloom size and rolling mill to produce Caterpillar's large size track bar (e.g., a bloom [] in cross-section). Thus, it is not a matter of a mill being able to retool its current rolling mills to produce bar to Caterpillar's required shape and specifications, but rather requiring additional equipment.

Caterpillar is not alone in its contention that there is no U.S. production of track bar. Several major domestic steel producers have acknowledged that they do not produce track bar, and have given their "full support" to Caterpillar's request for an exclusion. In fact, three of the mills have confirmed that they "do{} not produce this specific product nor {are} aware of any domestic sources for this specific product." In an industry such as the steel industry, where

See id. at 7.

Id. at 8-10; see also Caterpillar's Prehearing Brief (Remedy Phase) (filed with the U.S. International Trade Commission October 29, 2001) at 6-7.

See Caterpillar's Responses to the Commissioners' Questions Concerning Hot-Rolled Bar and Light Shapes (Remedy Phase) at 4 and Exhibit 3 (filed with the U.S. International Trade Commission November 14, 2001) (emphasis added). Caterpillar has attached, as Exhibit 1, a copy of these letters for the Committee's information.

mills typically know about other mills' capabilities, these declarations are compelling evidence that there is no U.S. production.

It is important to note that the public version of the Minimill 201 Coalition (Long Products) and the Cold Finished Trade Coalition's (the "Minimill Coalition") adjustment plans include no actions which would address their current inability to produce Caterpillar's track bar. Even if they did, Caterpillar would suffer a competitive disadvantage against its competitors because of the imposition of trade restrictions for years while a mill made the changes and attempted to produce track bar as a qualified Caterpillar supplier. As described in Caterpillar's exclusion request, in one case, Caterpillar worked for nearly a decade to develop the capabilities of a domestic mill to produce track bar to Caterpillar's specifications, but those efforts failed. Caterpillar cannot, and will not, ask its customers to wait while a U.S. mill attempts to qualify to make this product.

2. Alloy Ripper Shank Steel

As with track bar, one of the key limiting factors to U.S. production of alloy ripper shank steel is the rolling capability of domestic mills, as well as inadequate tooling. As Caterpillar has explained, no domestic mill is able to produce a bloom large enough to reduce into the alloy ripper shank steel with the required reduction ratio of at least 5:1. Nor does any domestic mill have the tooling to create the rounded edges required for Caterpillar's alloy ripper shank steel. 12

See Remedy Post-Hearing Brief of the Minimill 201 Coalition (Long Products) and the Cold Finished Trade Coalition and their individual members (Public Version), at 20-23 and Exhibit 6 (filed with the U.S. International Trade Commission November 15, 2001) ("Minimill Coalition Brief").

Caterpillar's Exclusion Request at 6.

See id. at 12-14.

See id. at 13-15. In fact, Bethlehem Steel, the parent company of Pennsylvania Steel ([

Moreover, the public version of the U.S. mills' adjustment plans provide no indication that their plans include the installation of larger casters or tooling that would enable them to produce the rounded edges required by Caterpillar. Even if they did, Caterpillar would be forced to wait for years while the mills made these changes to become a qualified supplier of this product, all the while suffering a competitive disadvantage caused by the import restraints.

B. The Minimill Coalition's Claims of U.S. Production Capability of Track Bar and Alloy Ripper Shank Steel Are Not Persuasive

In its Post-hearing Brief to the Commission in the remedy phase, the Minimill Coalition attempted to rebut Caterpillar's claim of no U.S. production of track bar. ¹³ In response to Caterpillar's testimony at the Commission's hearing that "{t}here is no U.S. production of track bar that our Illinois employees can use to fabricate track shoes", the public version of the Minimill Coalition's brief states: "Yet [...]". ¹⁴ The Minimill Coalition's narrative response to Caterpillar's detailed analysis is proprietary, and hence cannot be commented on here. However, as a result of Caterpillar's challenge to this overbracketing, the Minimill Coalition divulged some information in the letters attached in Exhibit 4 to its post-hearing brief. In that Exhibit, the Minimill Coalition attached letters from CMC Steel Group ("CMC") and Steel of West Virginia ("SWV") suggesting that they are each capable of producing track bar and/or alloy ripper shank steel. In contrast to Caterpillar's detailed discussion of the necessary equipment and processes. ¹⁵

informed its counsel that it did not object to Caterpillar's exclusion request for alloy riper shank steel. See Response from Bethlehem Steel, attached as Exhibit 2.

Minimill Coalition Brief at 20-23. A copy of these pages is attached hereto as Exhibit 3.

Id. at 22, quoting Transcript of the Remedy Phase of the Steel 201 Investigation ITC
Hearing (November 8, 2001) ("Tr.") at 606.

See Caterpillar's Exclusion Request at 6-10 and 13-14. Caterpillar has also attached, as Exhibit 4, an excerpt from an affidavit from Dr. Samir K. Banerji, a Senior Staff Engineer with Caterpillar, detailing the specific equipment and machinery necessary to produce track bar and alloy ripper shank steel, filed with Caterpillar's Post-hearing Brief to the Commission (omitting only Dr. Banerji's list of publications).

and its inability to source these products in the United States, these two mills merely assert that they can produce these products. As explained below, these assertions are unpersuasive, and insufficient to undermine Caterpillar's exclusion request.

1. **CMC**

The letter from CMC lists the products for which various parties, including Caterpillar, requested an exclusion (the actual list is deleted from the public version of the letter), but contains no mention whatsoever of producing, or even the ability to produce, track bar or alloy ripper shank steel -- the products for which Caterpillar has requested an exclusion. In fact, Caterpillar, by far the largest single U.S. consumer of track bar and alloy ripper shank steel has no knowledge of CMC currently producing these products. In Nor has CMC ever approached Caterpillar to supply either of these products. Therefore, under the "current production" standard established in Steel Wire Rod, CMC has no valid grounds to object to Caterpillar's exclusion request.

Even if track bar or alloy ripper shank steel could be made from one of the products listed by CMC, that assertion alone should not forestall Caterpillar's exclusion request. The ability to produce a semi-finished product does not guarantee that a manufacturer can produce the finished product. For example, [], the fact that CMC has the rolling capability to produce large SBQ bars does not guarantee that it has the steel-making capability to meet Caterpillar's cleanliness and toughness requirements. Likewise, although CMC may be able to produce cornered steel square bars, it has offered no proof that it can meet Caterpillar's required reduction ratio or rounded edge specifications. Therefore, CMC

Letter from CMC Steel Group to Ms. Donna R. Koehnke, November 12, 2001, Minimill Coalition Brief at Exhibit 4, included in Exhibit 3 of this submission.

Three major U.S. steel mills have concurred that they also are not aware of any track bar

has not even demonstrated that it has the ability to produce track bar, or alloy ripper shank steel. 18

2. **SWV**

SWV's letter is likewise not compelling. In a letter virtually identical to that from CMC, SWV lists the products for which exclusions have been requested (without bracketing the list), including Caterpillar's track bar and alloy ripper shank. SWV makes no pretensions that it currently produces any of these products. In fact, that position comports with Caterpillar's knowledge of the market, as well as that of three major U.S. mills. Thus, SWV, by its own admission, does not have a valid justification to challenge Caterpillar's exclusion request because, like CMC, it does not *currently* produce either track bar or alloy ripper shank steel.

All SWV claims is that it "is *capable* of producing all of these products..."²⁰

J.²¹ SWV has offered no specific evidence that it has the capacity to make track bar to Caterpillar's specification. Likewise, it has offered no evidence that it can meet Caterpillar's

production in the United States. See Exhibit 1.

Moreover, CMC has never produced track bar or alloy ripper shank steel for Caterpillar. Thus, even if CMC were to try to make these products for Caterpillar, the qualification process would take 12-24 months. During that time, Caterpillar would have to continue to import these products until CMC was approved and could produce them in commercial quantities.

Letter from Steel of West Virginia, Inc. to Ms. Donna R. Koehnke, November 12, 2001, Minimill Coalition Brief at Exhibit 4, included in Exhibit 3 of this submission.

Id. (emphasis added).

See Caterpillar's Exclusion Request at 6-10.

reduction ratio requirements or produce the rounded edges for Caterpillar's alloy ripper shank steel. If SWV (or CMC) had the ability to produce track bar or alloy riper shank steel in any commercially significant quantities, one must wonder why neither has approached Caterpillar to produce these products.

Caterpillar acknowledges that, given enough time and money, virtually any mill in the United States might be able to produce track bar and/or alloy ripper shank steel to its specifications. Caterpillar, however, cannot survive on theoretical hypotheses. It has contracts to supply track laying machinery and bulldozers with ripper shanks in the upcoming months to customers in the United States and around the world. In the competitive market of heavy equipment, Caterpillar cannot ask its customers to wait months or years until a U.S. mill can obtain the capability to manufacture track bar or alloy ripper shank steel in the United States. In fact, Caterpillar worked for nearly a decade to develop the capabilities of a domestic mill to produce Caterpillar's specifications, but those efforts failed.²²

Furthermore, in determining whether a particular product is suitable for an application (e.g., whether SWV can produce track bar suitable for Caterpillar's track shoes), that decision must lie with the customer. It is the customer -- Caterpillar -- who knows whether the product actually works in its intended application; and it is Caterpillar, not SWV, who has to assist the ultimate consumer if a track shoe fails. This Committee should, therefore, not accept a producer's word alone that it can produce a particular product.

II. Corus' Exclusion Request is Consistent with Caterpillar's Exclusion Request

As noted above, "grouser bars" and alloy ripper shanks were among the special profiles for which Corus requested an exclusion. This request comports with, and supports, the exclusion

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^{22 &}lt;u>Id</u>. at 6.

request submitted by Caterpillar. To avoid any confusion, however, Caterpillar offers the following explanations for the small discrepancies in Caterpillar's and Corus' submissions.²³

A. <u>Corus' "Grouser Bar" is the Same Product as Caterpillar's "Track Bar"</u>

Caterpillar has requested an exclusion for "special quality hot-rolled shapes used to make track shoes for track-laying machinery or for vehicles such as bulldozers and excavators", and referred to these shapes as "carbon track bar" or "alloy track bar" (or, collectively, "track bar"). ²⁴ Corus has requested an exclusion for "unique and specialized hot-rolled shapes used by manufacturers of earthmoving equipment. They are specially designed and used as 'track shoes' for bulldozers, hydraulic excavators, and tracked loaders." ²⁵ Corus referred to that product as "grouser bar". Notwithstanding the different terminology, the descriptions of these two products demonstrate that Caterpillar and Corus are referring to the same product. Indeed, Caterpillar has confirmed with Corus that the product it refers to as "grouser bar" is the product Caterpillar refers to as track bar. ²⁶

It is important to note, however, that the "grouser bar" referred to by Corus is different from the grouser bar referred to at the Commission's remedy hearing for long products, held on November 8, 2001. At that hearing, Mr. Selig, of Commercial Metals Company, asserted that grouser bar is produced in the United States.²⁷ As used by Mr. Selig, "grouser bar" is a bar product that can be cut into sections and welded onto an individual track shoe in the field if the

Corus is also providing clarifications that confirm the consistency of the Corus and Caterpillar submissions.

Caterpillar's Exclusion Request at 4.

Corus' Exclusion Request at 2.

In addition, the slight difference in dimensions stems from the fact that Caterpillar provided the minimum and maximum dimensions of the track bar it purchases from Corus, Caterpillar's only supplier. Corus, on the other hand, sells to Caterpillar and another U.S. purchaser, and thus has a slightly different range of dimensions.

Tr. at 584.

grouser breaks, eliminating the cost (and disruption) of replacing the entire track shoe.²⁸ As discussed above, to the best of Caterpillar's knowledge (and that of at least six major U.S. steel producers), there is no U.S. production of track bar, as defined by Caterpillar, in the United States.

B. Both HTS Numbers for Track Bar Must be Covered by the Exclusion

Caterpillar's exclusion request includes track bar imported under HTS numbers 7228.70.3040 (alloy track bar) and 7216.50.0000 (carbon track bar). Corus' exclusion request, however, referred to only a single HTS number (the HTS number itself being proprietary).

1.

C. There is No U.S. Production of Track Bar or Alloy Ripper Shank Steel

There is no track bar or alloy ripper shank steel manufactured in the United States to Caterpillar's specifications. Corus' exclusion request confirmed this fact.²⁹ Corus, however, incorrectly reported estimated production of track bar in the United States.³⁰ Corus intends to correct this mistake in its response filed today and reaffirm that there is no U.S. production nor reasonable likelihood of U.S. production of these products in the near future.

Caterpillar has attached, as Exhibit 5, a drawing of the cross section of a grouser bar. As this picture graphically demonstrates, the shape of a track bar differs significantly from that of a grouser bar, and is therefore significantly more complicated to produce.

Corus' Exclusion Request at 2, 3.

³⁰ Id. at 9.

III. Conclusion

For the above reasons, as well as the reasons set out in its initial exclusion request and in Corus' Exclusion Request concerning special profiles, Caterpillar respectfully requests that the Committee exclude boron alloy track bar, carbon track bar, and alloy ripper shank steel from any action under section 203(a) of the Act. These products are not produced in the United States, and are imported in such small volumes as to be inconsequential in the overall scheme of steel imports.³¹ Their exclusion will, therefore, not inhibit the domestic industry's ability to adjust to import competition, and will minimize collateral damage to downstream consumers.

Respectfully submitted.

Richard M. Belanger Elizabeth C. Hafner

Camelia C. Mazard

Counsel for Caterpillar Inc.

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This type of exclusion request for discrete, low volume products, does not violate Article 2.2 of the WTO Safeguards Agreement, requiring that safeguard measures be imposed on imports "irrespective of {their} source". Rather, such an exclusion comports with the limitation in Art. 5.1 that safeguard measures be applied "only to extent necessary to prevent or remedy serious injury."

Caterpillar's Exhibit List

- 1. Industry Support for Exclusion Request
- 2. Exclusion Request Questionnaire
- 3. Excerpts from the Public Version of Minimill 201 Coalition's Brief
- 4. Excerpts from Dr. Samir K. Banerji's Affidavit
- 5. Grouser Bar Cross Section

Exhibit 1

Industry Support for Exclusion Request

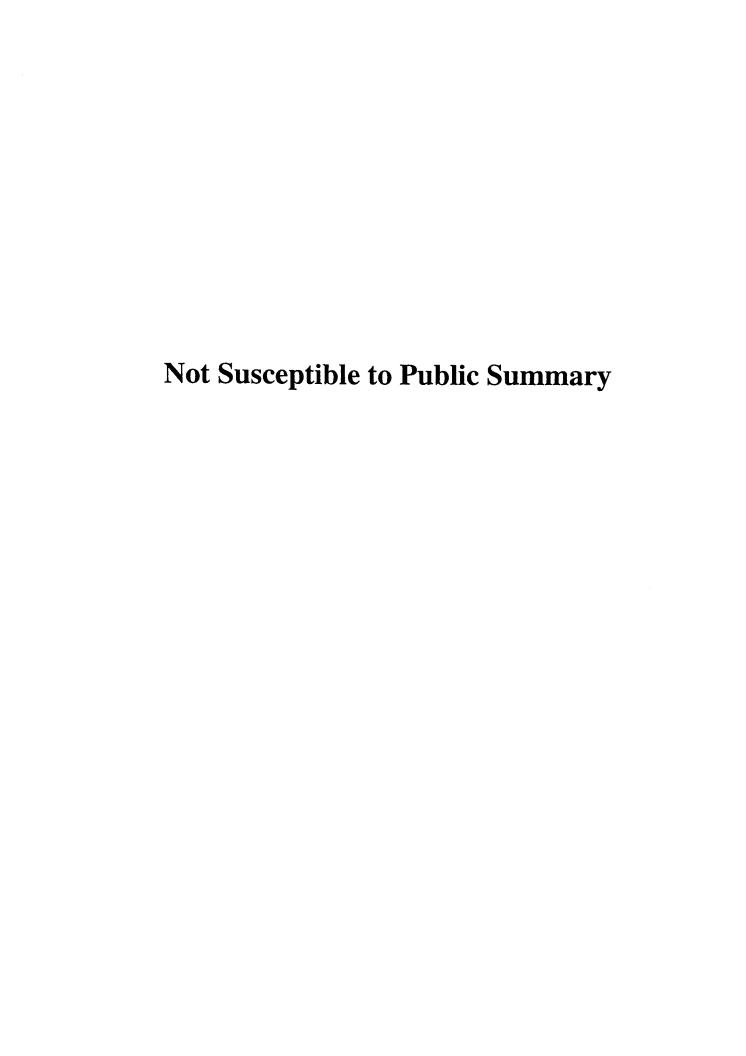


Exhibit 2

Exclusion Request Questionnaire

Company name:	Bethlehem Steel Corp.		
Company representative:	Dennis N. DIAS		
Product name;	Alloy Ripper Shank Steel		
Product description:	Alloy ripper shank steel is cut from rectangular hot-rolled alloy special sections, with a cross section of 2.9 inches to 4.3 inches by 1: inches to 17.7 inches. The ripper shank steel has rounded edges. The aluminum fine-grain steel of the alloy ripper shank steel is vacuum degassed, and produced to Caterpillar's proprietary specifications, which govern cleanliness, chemistry and hardenability. For customs purposes, alloy ripper shank steel can be described as follows: other flat-rolled products, vacuum degassed, with rounded edges, with a width of 300 mm or more but not exceeding 500 mm and with a thickness less than 125 mm, with a reduction ratio of 5:1 or greater, suitable for use in the manufacture of ripper shanks for vehicles of heading 8429. Imported under HTS number 7226.91.5000. No U.S. mill produces this product with Caterpillar's high reduction ratio requirement.		
Exclusion request by:	Caterpillar Inc.		
(1) This produ	ct should be excluded from the scope of relief.		
() This produ	() This product should not be excluded from the scope of telief.		
() Cannot res	pond because the product has not been sufficiently well described.		
Explanation:			
· ·			

Please return by fax to:

Susan Hester at (202) 429-1486 Ellen Schneider at (202) 371-7971

Exhibit 3

Excerpts from the Public Version of Minimill 201 Coalition's Brief

BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STEEL PRODUCTS

Inv. No. TA-201-073 (remedy) Investigation Business Proprietary Information deleted on Pages 7-8, 15-17, 22-23, Exhibit List, and in Exhibits 1, 3-5, 9, 11-13

PUBLIC VERSION

REMEDY POST-HEARING BRIEF OF THE MINIMILL 201 COALITION (LONG PRODUCTS) AND THE COLD FINISHED TRADE COALITION

Charles Owen Verrill, Jr. Alan H. Price Timothy C. Brightbill

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On behalf of the Minimill 201 Coalition (Long Products) the Cold Finished Trade Coalition

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On behalf of

November 14, 2001

Respondents' argument also presumes that a tariff would amount to an embargo on imports. That is not the case. A 50 percent tariff would still result in significant imports according to the Commission's model. This is intuitively consistent with the fact that there will be customers willing to pay the higher import prices particularly where the steel purchased is a small percentage of the final product, such as an automobile or bridge. Moreover, there is likely to be duty absorption, as has been the case after many dumping orders. Consequently, there is no practical way to measure the relative effects of a tariff and a quota.

The 50-year history of the international system demonstrates a clear preference for tariffs over quantitative restrictions. The Safeguards Agreement and recent panel reports emphasize this distinction, and for good reasons. The *Turkish-Textiles* report notes that quantitative restrictions impose absolute limits, while tariffs do not. Furthermore, tariffs permit the most efficient competitor to provide the subject merchandise, but quotas have a trade distorting effect and their allocation can be problematic. The Panel decision concludes, in part, that tariffs are the preferred remedy in safeguard actions.³⁷

V. EXCLUSIONS ARE NOT NECESSARY FOR STEEL BAR PRODUCTS

Respondents in these proceedings have requested a number of exclusions from the Commission's remedy recommendation on the grounds that these products are not made domestically. The domestic bar industries strongly object to Respondents' exclusion requests, since virtually all of the products under consideration are made or can be made domestically. Of those products not currently produced, the domestic industry has the capability to make these products if and when it becomes economically viable to do so. As Mr. Selig confirmed in his

Turkey - Restrictions on Imports of Textile and Clothing Products at 116 n.290.

testimony: "I don't know of any product, any profile, that can't be made in the United States." Tr. 584.

A. The ITC is Free to Rely on the USTR to Negotiate Exclusion Requests

The Trade Policy Staff Committee ("TPSC") at the USTR has formally established procedures for the consideration of exclusions in this investigation.³⁸ In fact, the TPSC has clearly indicated that "{r}equests for the exclusion of specific products from any action under section 203(a) should be submitted by noon on November 13, 2001; responses to requests should be submitted no later than November 27, 2001."³⁹ While the Commission may, of course, utilize its expertise in considering exclusion requests, it also may choose to rely upon the TPSC because of the time burden in negotiating an exemption narrow enough to cover only the product it is designed to cover. Because company metallurgists, sales managers, and other experts must provide input on the exclusion requests in order to avoid the creation of loopholes, the TPSC is in a good position to field these requests.

B. Virtually All Products Under Consideration Are or Can Be Made Domestically

During these proceedings, Respondents have requested several remedy exclusions for products they claim are not made – and cannot be made – domestically. Yet in fact, these exclusion requests must be categorically dismissed because the domestic bar industries have the capability to make virtually all of these products. And, where necessary, billets can be imported without restraint for rolling into products not otherwise available domestically.

See 66 Fed. Reg. 54322 (Oct. 26, 2001) (affirming that "The TPSC will consider requests by a producer, importer, or purchaser of certain steel products for the exclusion of a particular product... from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under section 203(a) of the Trade Act").

See id.

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Counsel for Turkish Respondents stated at the remedy hearing that "a very large portion of the hot-rolled bars exported from Turkey to the United States are very thin bars that are simply not made in the United States." Tr. 616. This is patently false. Birmingham, and Kentucky Electric Steel produce all of the Turkish Respondents' merchant bars, and and Birmingham produce equal angles below one inch.

J."

Mr. Lane testified on behalf of Caterpillar, "There is no U.S. production of track bar that our Illinois employees can use to fabricate track shoes." Tr. 606. Yet

J"

Furth 2. A-FIST has entered exclusion requests for several types of hot-rolled special quality bar and cold-rolled special quality bar, which are made by a combination of RTI, Timken, and CMC. Japanese Respondents have filed exclusion requests for bearing-quality steel wire rod and bar which is made by RTI, Timken, and MacSteel, as well as free-cutting steel wire rod and bar, which is made by RTI. Corus' exclusion requests cover forblift masts, bevel

See Letters from Birmingham Steel Corporation, and Kentucky Electric Steel to Ms. Donna Koennke, Exhibit 4.

⁴¹ See Letters from [

¹ to Ms. Donna Koehnke, Exhibit 4.

See Letters from RTI and CMC to Ms. Donna Koehnke, Exhibit 4.

⁴³ See Letter from RTI to Ms. Donna Koehnke, Exhibit 4.

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flats, and tellurium quality steel bar, which are produced by a combination of RTI, Steel of West Virginia, and

Products listed in Respondents' exclusion requests not currently made domestically could be made if it becomes economically viable to do so. For example,

C. Failing to Exclude Niche Products Will Not Lead to Supply Shortages

Respondents argue that "import restraining remedies would create a severe supply shortfall for steel consumers." This argument is based on the premise that if the Commission fails to recommend an exclusion for individual products, then domestic consumers will be unable to purchase those products. This argument fails for two reasons: First, the domestic bar industries have the capability to produce virtually all of the products covered by the Respondents' exclusion requests. Second, any products the industries currently do not produce could be purchased with payment of the tariff. The mere presence of a tariff does not prevent consumers from purchasing bar products.

See Letters from RTI, Steel of West Virginia and to Ms. Donna Koehnke, Exhibit 4.

See Letter from [Ito Ms. Donna Koehnke, Exhibit 4.

See CITAC Prehearing Remedy Brief at 9.

CMC Steel Group

A Commercial Metals Company

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Serving Steel Company Housealt, Tricks; November 12, 2001

Commercial Metals Company 7800 Stemmons Freeway, 10th Floor Dallas, TX 75247

Ms. Donna Koehnke, Secretary
United States International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

Re: Certain Steel Products, Inv. TA-201-073: Response to Exclusion Requests
for Remedy Investigation

Dear Ms. Koehnke:

On behalf of CMC Steel Group, I write to comment on the exclusion requests made by various companies with regard to long products in the International Trade Commissions Section 201 investigation of the U.S. steel industry.

A-FIST (Association for Fair International Steel Trade), Caterpillar, Corus, and Japanese and Turkish respondents have requested that the following steel products by accluded from the Commission's remedy investigation:

7 CMC currently

produces Hot-Rolled SBQ Thermally Treated Steel Bars, Hot-Rolled SBQ Sharp

Ms. Donna Koehnke, Secretary
November 12, 2001
Page 2

4.]

PUBLIC VERSION

Comered Steel Square Bars, and Large SBQ Hot-Rolled Bar in Certain Geographical Regions.

Respectfully submitted,

James Fritsch
CMC Steel Group



PUBLIC VERSION

swva, inc. a subsidiary of STEEL OF WEST VIRGINIA, INC.

November 12, 2001

Steel of West Virginia, Inc. P.O. Box 2547 Huntington, WV 25726

Ms. Donna Koehnke, Secretary
United States International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

Re: Certain Steel Products, Inv. TA-201-073: Response to Exclusion Requests for Remedy Investigation

Déar Ms. Koehnke:

On behalf of Steel of West Virginia, Inc., I write to comment on the exclusion requests made by various companies with regard to long products in the International Trade Commission's Section 301 investigation of the U.S. steel industry.

A-FIST ("Association for Fair International Steel Trade"), Caterpillar, Corus, and Japanese and Turkish respondents have requested that the following steel products be excluded from the Commission's remedy investigation:

- 1) Track Bar (Caterpillar)
- 2) Rippershanks (Caterpillar, Corus)
- 3) Bulb Flats (Corus)
- 4) Grouser Bars (Corus)
- 5) Forklift Masts (Corus)
- 6) Bevel Flats (Corus)
- 7) All Merchant Bars (including Small Merchant Bars) (Turkish)

Steel of West Virginia is espable of producing all of these products and therefore requests that they not be excluded from the Commission's remedy investigation.

Steel of West Virginia is a mini-mill located in Hunnington, West Virginia. We have a melt shop, two rolling mills and numerous fabricating facilities. Although we make special sections on both our mills, one mill is completely dedicated to producing special sections described above.

Phone: (304) 696-8200 Phone: (800) 624-3492 Fax: (304) 529-1479
Next Day Mai: 17th St. & 2nd Ave., Huntington, West Virginia 25703
Mailing Address: P.O. Bax 2547, Huntington, West Virginia 25726-2547
E Mail Address: steel@swvainc.com

PUBLIC VERSION

PAGES NOT SUSCUPTIBLE TO PUBLIC SUMMARY

Exhibit 4

Excerpts from Dr. Samir K. Banerji's Affidavit

PUBLIC VERSION

BEFORE THE U.S. INTERNATIONAL TRADE COMMISSION

In the Matter of:)	
m ale Matter of.	Ś	Inv. No. TA-201-73
Certain Steel Products	ý	(Remedy)
)	
)	

Affidavit of Dr. Samir K. Banerji

State of Illinois : ss
County of Peoria :

Before me this day personally appeared Dr. Samir K. Banerji, who upon oath, deposes and says:

- 1. My name is Samir K. Banerji.
- 2. I am a Senior Staff Engineer at Caterpillar Inc. ("Caterpillar") in Peoria, Illinois. Caterpillar is a U.S. manufacturer of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines. Caterpillar competes around the world from an asset base located primarily in the United States. It employs over 37,000 workers in the United States, with sales over \$20 billion in 2000. Just last year, it exported more than \$5 billion worth of machines and engines around the globe.
- 3. I have the following educational background: Bachelors in Science in Metallurgical Engineering from the Indian Inst. of Tech., Kanpur, India 1967; a Masters in Science in Materials Science & Engineering from the State Univ. of N.Y., Stony Brook, NY 1970; and a Ph.D. in Materials Science & Engineering from the State Univ. of N.Y., Stony Brook, NY 1973.

PUDIC VERSION.

- 4. I have the following work experience: Visiting Scientist; Politechnic of Milan, Italy (1974); Research Fellow; Univ. of Pennsylvania, Philadelphia (1975-76); Sr. Research Metallurgist; Foote Mineral Co., Exton, PA (1976-85); Consultant Steel mills and steel consumers (1985-87); and Caterpillar Inc.; Peoria, IL (1988-Present).
- 5. I have worked for Caterpillar since 1988. When I joined Caterpillar, I brought with me about 12 years of direct experience working with steel producers in various countries from my prior employment and consulting activities. Since 1995, I have worked in Caterpillar's Materials and Procurement Services, which is responsible for purchasing steel used in making Caterpillar's equipment. In my position at Caterpillar, I am considered as the corporate expert on steelmaking practices and command the respect of its steel suppliers in that regard. I am responsible for evaluating the technical capabilities and quality systems of all potential steel suppliers worldwide to serve Caterpillar's global steel needs. A typical evaluation includes: review the capabilities of the steel producer to make the types of steel product Caterpillar needs; inspecting their equipment; analyzing their ability to meet technical specifications; and review their systems and procedures to ensure their ability to produce products that will consistently meet Caterpillar's quality expectations. In my 25 year career, I have traveled to and evaluated a vast number of steel producing facilities in North and South America, eastern and western Europe, Russia, China, Japan, Korea and India.
- 6. My professional achievements include the publication of 33 technical papers in reputed technical journals and conference proceedings most of them being on the application, production and processing of steel; Editing 4 books one being "Boron in Steel"; and 2 U.S. Patents on Continuous Casting of Boron Steels. A list of my

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publications is attached. I have given numerous technical talks around the world based on my work. I have served and continue to serve in various national and international professional societies such as: the Educational Seminar Committee and Materials Property Database Committee of the American Society of Metals (ASM) International; the Ferrous Metallurgy Committee of the Metallurgical Society of AIME; the Mechanical Working and Steel Processing Committee of the Iron & Steel Society; the Bar Steel Technical Paper Review and Selection Committee of the Society of Automotive Engineers (SAE) International; and a member of the Executive Committee of the Peoria Chapter of ASM International. I have been nominated for the selection as a Fellow of the American Society of Metals (ASM) International by my external peers in the industry, reputed academic institutions and professional peers at Caterpillar Inc. This affidavit is based on my personal knowledge and experience with Caterpillar, the worldwide steel industry in general, and my professional and technical activities at the national and international levels.

A. Track Bar

- 7. In 2000, Caterpillar purchased approximately [_____] tons of track bar to manufacture track shoes for Caterpillar's earth moving equipment. Of that amount, approximately [_____] tons was alloy track bar and [_____] tons was carbon track bar.
- 8. The process of melting and rolling steel to create carbon track bar for Caterpillar is a complex multi-step process. Described simply, the steel is melted and refined, then cast into blooms. The blooms are then rolled across a series of unique

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rolling stands, with specialized tooling to make these track bar shapes. The track bar is then cut into 20 to 27 feet in length and straightened.

- 9. To melt and roll steel to create carbon track bar for Caterpillar, a facility must possess the following particular expertise and equipment:
 - the ability to make steel using the aluminum fine-grain practice to ensure the required toughness;
 - a ladle metallurgy station for further refining;
 - the ability to shroud effectively pouring streams, in order to eliminate reoxidation;
 - the technical expertise to design the rolls/tooling to produce tight tolerances and minimize defects;
 - the ability to reduce a bloom size to produce a minimum 7:1 reduction ratio;
 - large equipment with sufficient horsepower necessary to produce Caterpillar's size range of track bar;
 - the specialized rolls necessary to produce unique and difficult track bar profiles (these rolls/tooling are not interchangeable from one facility to another); and
 - the specialized rolls to straighten the track bars (these rolls/tooling are also not interchangeable from one facility to another, as mentioned above).
- 10. To melt and roll steel to create alloy track bar for Caterpillar, a facility must have all the expertise and equipment of a facility that is able to create carbon track bar, as listed above, plus the following:
 - a caster with a minimum rating of 1B per Caterpillar specification 1E2700 and military specification MIL-S-70703;
 - the ability to vacuum degas hydrogen sensitive grades; and
 - the ability to make boron steels with an effective practice to ensure the required hardenability.
- 11. Caterpillar has a long history of purchasing its steel requirements from domestic mills. Up to the 1980's, Caterpillar purchased its track bar requirements from

any one of three domestic mills. By the early 1980s, the three domestic mills that were producing our track bar, all of which still sell other products to Caterpillar today, informed Caterpillar they were no longer interested in producing track bar and ceased production of track bar. As a result, Caterpillar had to find a new supplier to produce its track bar.

12. As is Caterpillar's practice, Caterpillar first looked for a domestic source.

Caterpillar worked for many years to develop the capabilities of [

] to produce track bar to Caterpillar's specifications, but those efforts failed.

The primary reasons for this mill's failure included [

}.

13. There are no mills in the United States that currently produce carbon or alloy track bar.

B. Ripper Shank Steel

- 14. In 2000, Caterpillar purchased approximately [] tons of an alloy steel used to manufacture ripper shanks for Caterpillar earth moving equipment ("ripper shank steel").
- 15. The process of melting and rolling steel to create ripper shank steel for Caterpillar is a complex multi-step process. Described simply, the steel is melted and refined, then cast into blooms. The blooms are then rolled across a series of unique rolling stands with specialized tooling to make these ripper shank shapes.
- 16. To melt and roll steel to create ripper shank steel for Caterpillar, a facility must have the following expertise and equipment:

- the ability to make steel using the aluminum fine-grain practice to ensure the required toughness;
- a ladle metallurgy station for further refining;
- the ability to vacuum degas hydrogen sensitive grades;
- the ability to shroud effectively pouring streams in order to eliminate reoxidation;
- a caster with a minimum rating of 1B per Caterpillar specification 1E2700;
- the ability to make boron steels with an effective practice to ensure the required hardenability;
- the technical expertise to design the rolls/tooling to produce tight tolerances and minimize defects;
- the ability to reduce a bloom size to produce a minimum 5:1 reduction ratio;
- large equipment with sufficient power necessary to produce Caterpillar's size range of ripper shank bar;
- the specialized rolls necessary to produce ripper shank profiles (these rolls/tooling are not interchangeable from one facility to another); and
- the technical expertise to design the rolls/tooling to produce tight tolerances and minimize defects.
- 17. Caterpillar has long sought to purchase its steel requirements from domestic mills. Up to the 1980's, Caterpillar purchased its ripper shank steel from a domestic mill. During the early 1980s, this domestic mill informed Caterpillar it was no longer interested in producing ripper shank steel and ceased production. Because no other mill was able to produce ripper shank steel, Caterpillar turned to a proven foreign supplier.
- 18. More recently, Caterpillar again sought to find a domestic supplier because Caterpillar prefers to source its products domestically. Caterpillar worked with

 [], in an effort to

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develop them as a source. However, despite repeated efforts, this domestic mill did not have the steel-making equipment or capability to produce ripper shank steel to Caterpillar's specifications.

There are no mills in the United States that currently produce ripper shank steel.

C. Restrictive Trade Measures

20. In my opinion, the imposition of restrictive trade measures against track bar or ripper shank steel, neither of which are made by domestic steel mills, will harm Caterpillar's ability to competitively manufacture these products in the United States, without providing any benefit to the domestic mills. Our competitors will not be faced with these added expenses so, unless we change our manufacturing locations, we will not be competitive in these markets.

I declare under penalty of perjury that the foregoing is true and correct.

Dr. Samir K. Banerji

Subscribed and sworn to before me this 14th day of November 2001

Notary Public

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MOTARY PUBLIC, STATE OF ILLIMOSS
MY COMMISSION EXPIRES 12-4-2001

Exhibit 5 Grouser Bar Cross Section

DESCRIPTION:

STEEL SECTION - GROUSER BAR

APPLICATION:

WELD-ON GROUSER BAR FOR FIELD REPLACEMENT

